

ISCR Case No. 07-05662

SSN: -----

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APPEARANCES

Robert E. Coacher, Esq., Department Counsel

Pro Se

Applicant is a 28-year-old analyst for a defense contractor. She had four incidents with alcohol within a two year period when she was a minor. Afterward, she attended and graduated from college, and had no alcohol-related incidents for over six years. She then had a driving while intoxicated incident in 2006 that has not yet been resolved by court action. She acknowledges her mistake of drinking alcohol and then driving in 2006. In spite of the latest alcohol-related incident, she demonstrated that she does not currently consume alcohol to such an excess as to create an alcohol consumption security concern. Clearance is granted.

On June 27, 2007, the Defense Office of Hearing and Appeals (DOHA) issued a Statement

of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), using the new Adjudicative Guidelines (AG) issued by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on July 9, 2007. The SOR alleges security concerns under Guideline G (Alcohol Consumption) of the Directive.

Applicant answered the SOR in writing on July 25, 2007. She admitted five and denied one of the allegations under Guideline G, and provided some explanation for her actions. She elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on August 7, 2007. Applicant received a complete file of relevant material (FORM), and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. She provided additional information in her response to the FORM on September 3, 2007. Department counsel, on September 17, 2007, noted no objection to consideration of the additional information. The case was assigned to me on September 27, 2007.

FINDINGS OF FACT

I thoroughly and carefully reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is a 28-year-old analyst for a defense contractor. She is single. She started college in 2001 receiving a bachelor of arts degree in 2005. As part of her employment with the defense contractor, Applicant submitted a security clearance application on June 16, 2005.¹

Applicant admits that in April 2000, when she was six months shy of her 21st birthday, she was involved in an automobile accident and arrested for driving under the influence (underage). She plead guilty, was fined \$100, and ordered to perform community service. Applicant noted that she was not intoxicated at the time since her blood alcohol level was only .03. She was charged with driving under the influence because she was under the lawful age to drink alcohol and was driving after drinking alcohol.² Applicant admits she was arrested for being a minor in possession of alcohol in April 1998, and received a fine. She was arrested for the same offense in December 1998, and again fined and directed to perform community service. She was arrested a third time for the same offense in May 1999, and again fined and directed to perform community service.³ Applicant also admits she was arrested in July 2006 for driving under the influence of alcohol. Her case has not yet been resolved by the court. It has been postponed a number of times and was last scheduled for a

¹Item 4.

²See Response to FORM, dated September 3, 2007.

³Items 1 and 3.

hearing on August 27, 2007.

SOR allegation 1.f is that since May 2002, Applicant drinks alcohol approximately every week-end to the point of intoxication. She denies drinking every weekend to the point of intoxication. There is no information in the case file to establish that Applicant drinks every week-end to the point of intoxication.⁴

Applicant attributes her alcohol problems to youthful indiscretions and poor family life. Except for the incident in 2006, she was underage for drinking alcohol when all of the other incidents took place. Her parents were alcohol and drug abusers, and her father spent time in prison. She was mostly raised in church sponsored homes. She admits that when she graduated from high school, she drank alcohol to excess. She learned how alcohol affected her life, refrained from drinking alcohol to excess for over six years, and completed college. Her arrest for driving under the influence of alcohol in July 2006 after an automobile accident was a mistake, and she stated she will learn from that mistake.⁵

Applicant is highly rated as an employee by her defense contractor employer. She has been rated as an essential member of the contractor's team, an asset to the organization, and a pleasure to work with. She has also maintained a good credit score and does not have financial problems.⁶

POLICIES

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information."⁷ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁸

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2, amended by the new Administrative Guidelines, of the Directive sets forth the standards for determining eligibility for access to classified information, listing the disqualifying conditions and mitigating conditions to be considered for each guideline. Each clearance decision must be fair,

impartial, and a commonsense decision based on the relevant and material facts and circumstances, as well as the whole person concept.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative

⁴See, FORM, footnote 4.

⁵Item 3.

⁶*Id.*

⁷*Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸Directive ¶ E2.2.1.

judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.⁹

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.¹⁰ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must present evidence to establish controverted facts in the SOR that may disqualify the Applicant from access to classified information.¹¹ Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.¹² An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹³ The government is under no duty to present evidence to disprove any mitigating condition. Administrative Judges cannot assume or infer that any particular mitigating condition is applicable because the government does not present evidence to disprove that particular mitigating condition.¹⁴ “[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.”¹⁵ “Any doubt as to access to classified information will be resolved in favor of the national security.”¹⁶

CONCLUSIONS

I carefully considered all of the factors in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

⁹AG 2(a).

¹⁰See Exec. Or. 10865 § 7.

¹¹Directive ¶ E3.1.14.

¹²ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); see Directive ¶ E3.1.15.

¹³ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁴ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).

¹⁵ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

¹⁶*Egan*, 484 U.S. at 531; see Directive ¶ E2.2.2.

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.¹⁷ Applicant's arrests for minor in possession of alcohol, and for driving under the influence of alcohol raises Alcohol Consumption Disqualifying Conditions (AC DC) ¶ 22(a) (alcohol-related incidents away from work, such as driving under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent), and AC DC ¶ 22(c) (habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent). Applicant was a minor when she was arrested three times for possession of alcohol and once for driving as a minor after drinking alcohol in a two-year time (April 1998 to April 2000). She admits she was drinking alcohol excessively during this time. Four arrests in that time frame shows she was habitually drinking alcohol sometimes to the point of impairment.

Security concerns for excess alcohol consumption can be mitigated under Alcohol Consumption Mitigating Conditions (AC MC) ¶ 23(a) (So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment), and AC MC ¶ 23(b) (The individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (of an alcohol abuser). Applicant acknowledges that in her youth, she abused alcohol. She matured and attended college and earned her degree. From 2000 until 2006, while a college student and after starting to work, she did not have an alcohol-related incident. However, she was arrested in 2006 for driving under the influence. While the court action for this offense has not been completed, she acknowledges that she did drive while intoxicated. She realizes her mistake and acknowledged her vow not to have it happen again. The security concern is for excess alcohol consumption that leads to questionable judgment resulting in concerns for reliability and trustworthiness. The absence of any alcohol-related incidents for over six years while Applicant attended college and matured followed by one incident of alcohol abuse does not cast doubt on her current reliability, trustworthiness or good judgment. She showed responsible use of alcohol, if not abstinence, for over six years, and has overcome her youthful problem with alcohol. The latest incident with alcohol does not show she now consumes alcohol to such an extent as to create a security concern. I find Applicant mitigated security concerns for alcohol consumption.

I have considered all of the evidence and the "whole person" in evaluating Applicant's security worthiness. I considered Applicant's candor and honesty in her self-evaluation of her use of alcohol. She did not abuse alcohol for over six years and earned a college degree. She understands the problems associated with alcohol abuse. The absence of alcohol abuse for over six years, even considered in conjunction with the recent one-time use of alcohol to excess by driving under the influence of alcohol, shows that her present alcohol consumption is not excessive and does not create a security concern. I conclude she is eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations set forth in the SOR, as required

¹⁷AG ¶ 21.

by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:

FOR APPLICANT

Subparagraph 1.a:

For Applicant

Subparagraph 1.b:

For Applicant

Subparagraph 1.c:

For Applicant

Subparagraph 1.d:

For Applicant

Subparagraph 1.e:

For Applicant

Subparagraph 1.f:

For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant a security clearance for Applicant. Clearance is granted.

Thomas M. Crean
Administrative Judge